



HONG KONG MONETARY AUTHORITY

香港金融管理局

## Banking Supervision Department

Our Ref.: B10/1C  
B1/15C

19 August 2013

The Chief Executive  
All Authorized Institutions

Dear Sir/Madam,

### **Foreign Account Tax Compliance Act in the U.S.**

The issue of tax evasion has assumed increasing prominence within the international community and various countries have introduced or are contemplating introducing changes to their tax regimes.

To ensure compliance with not only local regulations but also all applicable overseas regulatory requirements, AIs should critically assess the implications of such changes (including seeking legal advice) for their customers and operations, taking into account their scale and nature of business, geographical areas of operation, etc. A case in point is the Foreign Account Tax Compliance Act (“FATCA”), which was enacted by the U.S. in 2010 to combat tax evasion by U.S. persons holding investments in offshore accounts.

According to the Internal Revenue Service (“IRS”) of the U.S.<sup>1</sup>, FATCA will require foreign financial institutions (“FFIs”) to report to the IRS certain information about financial accounts held by U.S. taxpayers, or by foreign entities in which U.S. taxpayers hold a substantial ownership interest. To properly comply with these reporting requirements, FFIs will have to enter into a special agreement with the IRS (“FFI Agreement”) by the deadline specified by the IRS. Non-participating FFIs may be subject to withholding taxes on relevant payments received by the FFIs.

Where AIs conclude that any overseas tax regime changes may have implications for their customers and operations, they should put in place process and controls to ensure compliance and develop good practices through industry collaboration if appropriate. For instance, in the case of FATCA, AIs should ensure compliance by implementing necessary process and controls, which among other things may include:

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<sup>1</sup> [http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-\(FATCA\)](http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-(FATCA))

- (a) AIs should consider the legal, compliance and operational implications (including customer communication) of the FFI Agreement, including resources implications, for FATCA implementation. For instance, the FFI Agreement requires FFIs to perform additional due diligence and provide information about customers who are U.S. taxpayers or foreign entities in which U.S. taxpayers hold a substantial ownership interest. During the process, AIs may obtain further information from their customers to identify those accounts maintained by U.S. persons.
- (b) Whenever there is a need, AIs should inform customers and obtain their specific consent before reporting the requested information to the IRS. At all times, AIs should ensure that they comply with all provisions of the Personal Data (Privacy) Ordinance and adequate preparation should be made to respond to customer enquiries, taking into account the Ordinance.

To support AIs' efforts in the above matters, the HKMA has suggested that the Hong Kong Association of Banks and the DTC Association offer appropriate assistance to facilitate the development of good practices for compliance with overseas tax regimes, including the FATCA of the US.

If you have any questions relating to this letter, please feel free to contact Mr. Stewart McGlynn on 2878-1095 or Mr. Gavin Cheung on 2878-8305.

Yours faithfully,

Steve Lau  
Acting Executive Director (Banking Supervision)

c.c. The Chairman, The Hong Kong Association of Banks  
The Chairman, The DTC Association  
FSTB (Attn: Mr Jackie Liu)